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Gov.Doc. Canada. External Affairs,Dept.of
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Lakes-St.Lawrence basin develop-
ment. Supplement, No.1.

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Canada. External Affairs, Dept. of

CORRESPONDENCE AND DOCUMENTS

relating to

THE GREAT LAKES-ST. LAWRENCE BASIN DEVELOPMENT

□ 1938-1941 I.

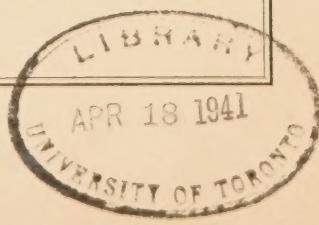
SUPPLEMENT No. 1

I. LEGAL OPINIONS

II. SUMMARY OF OUTSTANDING FEATURES



OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1941



Canada. External Affairs, Dept. of

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I. LEGAL OPINIONS

Correspondence setting forth legal opinions, from the Legal Adviser of the Department of External Affairs, and the Deputy Minister of Justice, and the Legal Adviser of the State Department, and the Attorney General of the United States of America, with regard to the validity of an Agreement based upon the Legislative Authority of Congress.

- No. 1. Letter from the Acting Under-Secretary of State for External Affairs to the Deputy Minister of Justice, February 28, 1941.
- No. 2. Letter from the Deputy Minister of Justice to the Acting Under-Secretary of State for External Affairs, March 11, 1941.
- No. 3. Memorandum by the Legal Adviser of the Department of External Affairs, March 12, 1941.
- No. 4. Formal opinions by legal authorities in the United States.
 - (a) Memorandum by the Legal Adviser of the State Department, Washington, March 13, 1941.
 - (b) Letter from the State Department, Washington, transmitting Legal Adviser's memorandum to the Attorney General of the United States, March 13, 1941.
 - (c) Letter from the Attorney General of the United States to the Secretary of State of the United States, March 14, 1941.

No. 1.

Letter from the Acting Under-Secretary of State for External Affairs to the Deputy Minister of Justice, February 28, 1941.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA,

OTTAWA, February 28, 1941.

DEAR SIR,—In the House of Commons Debates Vol. 29, No. 27, February 24, 1941, the Leader of the Opposition raised the question as to whether in the St. Lawrence negotiations the ultimate contract with the United States should take the form of a Treaty or an Agreement. He asked whether the opinion of the Department of Justice had been taken on this phase of the question and, if so, he wanted to have it tabled.

The Prime Minister suggested that the Department of Justice had been looking into this question and he undertook to make available an opinion from the Department regarding the legal point raised by Mr. Hanson.

I am enclosing a copy of a memorandum prepared for the Secretary of State for External Affairs, discussing this question and also the annexed series of notes attached to a memorandum from the Legal Adviser of the State Department, to Mr. Berle, dated February 10, 1939, setting forth the views held by the Legal Advisers of the State Department.

Mr. Hanson's point was confined to the rather narrow question as to whether procedure by agreement would be justified by the Boundary Waters Treaty. I think that I am justified in assuming, however, that both Mr. Hanson and the Prime Minister would desire to have a discussion of the more general question as to whether an agreement based upon legislation would have legal validity and would be effective from the point of view of the protection of Canadian interests.

You will of course be aware of the fact that the most recent, and perhaps the most important, precedents are the Trade Agreements negotiated with the United States, particularly by this country. They are fundamentally international agreements based upon legislative authority.

This matter is regarded as urgent, and I hope that you will let me have an opinion or memorandum for submission to the Prime Minister and for tabling in the House of Commons.

Yours sincerely,

N. A. ROBERTSON,
*Acting Under-Secretary of State
for External Affairs.*

The Deputy Minister of Justice,
Ottawa, Canada.

(NOTE:—The memoranda and notes referred to in the third paragraph of the above letter were tentative in character and were designed for preliminary consideration. The memorandum for the Secretary of State for External Affairs was revised and is set forth as Document No. 3 in this series. The notes and memorandum from the Legal Adviser of the State Department were embodied in the memorandum which is set forth as document No. 4 (a) in this series.)

No. 2.

Letter from the Deputy Minister of Justice to the Acting Under-Secretary of State for External Affairs, March 11, 1941.

DEPARTMENT OF JUSTICE,

OTTAWA, March 11, 1941.

JR. 5551-41

DEAR SIR,—I have given consideration to the matters raised in your letter of the 28th ultimo, in connection with the St. Lawrence waterway development.

I am disposed to agree with Mr. R. B. Hanson's contention that procedure by agreement in this matter would not be justified by the provisions of the Boundary Waters Treaty of 1909.

Whether or not an agreement based upon legislation would be effective from the point of view of protection of Canadian interests is a matter upon which it is difficult for a Canadian lawyer to give a satisfactory opinion. Canada is entitled to have the contract ratified in a manner or by a method which the United States will regard as binding. It is generally understood that a treaty ratified in accordance with the United States Constitution is binding upon the United States and before proceeding to enter into an agreement based upon legislation, I suggest that this Government should ask for an official opinion from the law officers of the United States as to whether the proposed procedure will be regarded in the United States as binding upon that country. I suggest that this opinion be secured, if possible, from the Attorney General of the United States.

Yours very truly,

W. STUART EDWARDS,
Deputy Minister.

N. A. Robertson, Esq.,
Acting Under-Secretary of State
for External Affairs,
Ottawa.

No. 3.

*Memorandum by the Legal Adviser of the Department of External Affairs,
March 12, 1941.*

GREAT LAKES-ST. LAWRENCE BASIN DEVELOPMENT
PROCEDURE BY AGREEMENT BASED UPON THE
LEGISLATIVE AUTHORITY OF CONGRESS

1. In the course of negotiation of the arrangements with the United States for the development of navigation and power in the Great Lakes-St. Lawrence Basin, the question has arisen whether such arrangements should be embodied in a Treaty, or in an Agreement based upon the legislative authority of Congress.

2. The United States Government has taken the position that it was desirable that procedure by Agreement should be adopted, rather than procedure by Treaty. The United States representatives have urged that such a course would be justified by the provisions of the Boundary Waters Treaty of 1909. Further, they have urged that, apart from the Boundary Waters Treaty, procedure by Agreement could be justified on the basis of the Constitutional Law of the United States and International Law and Practice.

3. The following points need to be examined:—

- (a) Whether procedure by concurrent legislation or by Agreement could be supported by the authority of the provisions of the Boundary Waters Treaty.
- (b) Whether, apart from the Boundary Waters Treaty, procedure by Agreement might be justified. This point would divide itself into two subordinate questions,—
 - (i) Whether an Agreement, based upon the legislative authority of Congress, would give rise to a valid obligation, recognized by the Courts of the United States;
 - (ii) Whether such Agreement would create an obligation recognized in International Law and cognizable by international tribunals.
- (c) Whether an arrangement, based upon the legislative authority of Congress, would give rise to an obligation that would be as effective from the international point of view as an arrangement based upon Treaty.

4. The first point is whether procedure by concurrent legislation or by agreement could be supported by the authority of the provisions of the Boundary Waters Treaty. Article XIII provides:

ARTICLE XIII

In all cases where special agreements between the High Contracting Parties hereto are referred to in the foregoing articles, such agreements are understood and intended to include not only direct agreements between the High Contracting Parties, but also any mutual arrangement between the United States and the Dominion of Canada expressly by concurrent or reciprocal legislation on the part of Congress and the Parliament of the Dominion.

There are two Articles which refer to "Special Agreement." Article III provides:—

ARTICLE III

It is agreed that, in addition to the uses, obstructions, and diversions heretofore permitted or hereafter provided for by special agreement between the Parties hereto, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line, shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the International Joint Commission.

Article IV provides:—

ARTICLE IV

The High Contracting Parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary unless the construction or maintenance thereof is approved by the aforesaid International Joint Commission.

It will be observed that, in both of these instances, the provisions with regard to special agreements are in the nature of exceptions from the general operation of the Articles, in requiring certain types of works to be submitted for the approval of the International Joint Commission. They do not, in themselves, enable developments to be undertaken by special agreement, they merely except cases covered by special agreement from the requirement of approval by the Commission.

It has been contended that Article XIII should be construed as authorizing arrangements for the development of Boundary Waters to be effected by "special agreements."

The objections to this contention are as follows:—

- (a) It is contrary to the position taken by the Governments over a period of thirty years;
- (b) In other cases, in which it has appeared to be desirable to work out arrangements for the development of Boundary Waters, independent conventional arrangements have been adopted; e.g. the Lake of the Woods Convention, the Rainy Lake Watershed Convention, and the Niagara Convention of 1929. The Governments have assumed that it would not be possible to carry out these arrangements by "special agreement" under Article XIII;
- (c) It is difficult to justify the argument on the basis of the wording of the Boundary Waters Treaty. Article XIII does not lend itself to a construction that would make it an enabling Article. The straightforward and simple meaning, that one is bound to attribute to this Article, is that the "special agreements" under Articles III and IV do not need to be treaties sanctioned by the Senate. They may be

direct agreements between the High Contracting Parties or mutual arrangements expressed by concurrent or reciprocal legislation. It seems to be clear that this Article cannot be interpreted as enabling a special agreement to be made in such a manner as to endow the agreement with elements of validity drawn from the Boundary Waters Treaty. It can only be interpreted as enabling a special agreement to except specific works from the requirements of Articles III and IV.

5. The second point is whether, apart from the Boundary Waters Treaty procedure by Agreement might be justified. This would depend upon two questions,—

- (i) Whether such an Agreement would give rise to a valid legal obligation which would be recognized by the Courts of the United States;
- (ii) Whether such an Agreement would create an obligation recognized in International Law and cognizable by international tribunals.

The question as to whether an Agreement based upon the legislative authority of Congress would give rise to a valid obligation is one that would depend primarily upon the constitutional law of the United States. It is one upon which it is not possible for a Canadian lawyer to speak with confidence and it is necessary to rely upon the formal opinion submitted by the advisers of the United States Government in legal matters.

This would not be an ordinary case of reliance upon a legal opinion. It is more than that. It is understood that the United States authorities will place upon record in a formal manner opinions by the Legal Adviser of the Department of State and by the Attorney General of the United States to the effect that an Agreement based upon Congressional legislation would give rise to a valid obligation, binding upon the United States as respecting Canada. It would be impossible for the Government of the United States, after following such a course, to maintain successfully, either in diplomatic negotiation or before an international tribunal, that such an Agreement had no legal validity. International tribunals are accustomed to recognize as an important source of law the formal opinions submitted by persons in the position of the Legal Adviser of the State Department or of the Attorney General. One could have complete confidence that an international tribunal seized of a dispute of this character would decide that such an Agreement created a legal obligation of which it could properly take cognizance.

Notwithstanding the difficulty in pronouncing upon a question of this sort, closely related to the constitutional law of the United States, it is submitted:—

- (a) That an Agreement based upon the legislative authority of Congress would give rise to a valid obligation, recognized by the Courts of the United States;
- (b) That it would not be possible for a Government of the United States, either in diplomatic negotiation or in the course of arbitration before an international tribunal, successfully to challenge the validity of such an Agreement as creating an obligation recognized in International Law and cognizable by international tribunals.

6. The third point is whether an arrangement of this sort, based upon legislation authorized by Congress, would give rise to an obligation that would be as effective from the international point of view as an arrangement based upon a treaty.

An Agreement of this sort must be tested from various points of view. A contractual arrangement concerning the Great Lakes-St. Lawrence System should satisfy certain tests;

there should be a good prospect of its being carried to completion by the High Contracting Parties;

after completion, there should be a certainty that the High Contracting Parties would live up to its terms.

Assuming that an arrangement was concluded, it would take from four to six years for completion. Progress would depend on continued governmental interest and upon continued annual votes by Parliament and Congress. The only thing that could prevent completion would be abandonment by one or both of the governments or failure on the part of Parliament or Congress or both to vote the necessary money.

From this point of view, there can be no doubt that procedure by legislation would be as satisfactory as procedure by treaty. Indeed, there would be certain advantages as compared with the other procedure. Approval by legislation would commit both the Senate and House of Representatives to the policy of making the annual appropriations which would be needed to complete the work. It would be of some advantage to have had the House of Representatives actively take responsibility for the approval of a measure which would require that House to vote vast sums of money from year to year over a period of from four to six years.

After completion, it is important that the High Contracting Parties should live up to the terms of the arrangement. From this point of view it might be contended that authorities in the United States would be inclined to give more weight to a treaty than to a legislative pact. It should not be overlooked that a treaty could be overridden by inconsistent legislation in the United States just as a legislative pact could be overcome by the repeal of the legislation which invested it with authority. It should also be borne in mind that the precedents, in which this procedure has been used, extend over many generations and that there has been no instance in which an arrangement based upon agreement and legislation has been questioned by any Government in the United States. Bearing in mind these factors, there can be no doubt that the two countries concerned would live up to the terms of an arrangement based upon a legislative pact and it could be safely assumed that such an arrangement would be as permanent as one based upon a treaty.

In considering this problem, it is necessary to go behind the screen of legalism and to examine fundamental aspects of the problem. The strength of a St. Lawrence pact would not lie in legalistic concepts. It would lie in the fact that a state of affairs had been brought about which could only work on the basis of both countries loyally carrying out their undertakings. Upon completion, there would be a dam at Cornwall and one near Iroquois Point. There would be locks at both places on the United States side. In theory, it might be possible to argue that it would be open to the United States to close these locks to Canadian shipping. It would be equally possible to argue that it would be open to Canada to close the locks at Beauharnois, Lachine and the Welland. Navigation would then be impossible to both countries (excepting, of course, the fourteen feet navigation on the Canadian side which would not be affected).

Again, in theory, it would be possible to argue that the United States could blow up the Cornwall dam and thus destroy the power on the Canadian side. The power on the New York side would be destroyed by the same act.

These are theoretical speculations. In reality, a situation would be brought about in which the facts would compel both the governments to carry out

an agreement upon which the welfare of the people in the two countries was dependent. No government would dare to contravene the pact. There is no way in which the Canadian Government could contravene the pact without causing as much disadvantage to Canadians as to interests in the United States. In the same way Congress could not repeal the legislation authorizing the agreement without causing as much disadvantage to United States interests as to Canadian. Further, Congress could not in this manner gain any advantage whatsoever for United States interests.

7. The foregoing considerations lead to the following conclusions:—

- (a) Procedure by concurrent legislation or by agreement could not be supported by the authority of the provisions of the Boundary Waters Treaty;
- (b) Apart from that Treaty, an agreement based upon the legislative authority of Congress would give rise to a valid obligation which would be recognized by the Courts of the United States. Further, it would not be possible for the Government of the United States, either in diplomatic negotiations, or in the course of arbitration before an international tribunal, successfully to challenge the validity of such an agreement.
- (c) An agreement based upon legislation would give rise to an obligation that would in fact be as effective from the international point of view as an arrangement based upon treaty.

J. E. READ,
*Legal Adviser of the Department of
External Affairs.*

No. 4.

FORMAL OPINIONS BY LEGAL AUTHORITIES IN THE UNITED STATES

(a) *Memorandum by the Legal Adviser of the State Department.
Washington, March 13, 1941*

AGREEMENT BETWEEN THE UNITED STATES AND CANADA FOR THE UTILIZATION OF THE WATERS OF THE GREAT LAKES-ST. LAWRENCE BASIN

For several years the United States and Canada have had under consideration the feasibility of a joint undertaking for the improvement of the Great Lakes-St. Lawrence Basin so as to make these waters available to sea-going vessels, the development of hydro-electric power, etc. The Legal Adviser of the Department of State, in a memorandum dated February 10, 1939, expressed the opinion that an arrangement between the United States and Canada concerning the project could be effected by a simple agreement between the two countries and approval of the agreement by legislation in the United States and in Canada. The negotiations have progressed to the point where an agreement is about ready to be signed, but before proceeding to signature it is thought desirable to ascertain whether the Attorney General concurs in the view that the purposes may be accomplished in this fashion.

It is not necessary here to enter into a discussion of the treaty-making power or of the power of the President to enter into executive agreements with foreign countries. It is sufficient to say that a very large number of such

agreements on various subjects have been entered into from time to time throughout the history of this country. Some of them have been specifically authorized by acts of Congress; others, though not specifically authorized, have been within the framework of acts of Congress; and still others have been concluded without enabling legislation on the subject.

Following the failure of the Senate to approve a treaty for the annexation of Texas, the annexation was accomplished by a joint resolution approved on March 1, 1845 (5 Stat. 797), after passage by a simple majority vote of the two houses of Congress. Likewise, in the case of Hawaii, a treaty of annexation had been signed on June 16, 1897, and approved by the Hawaiian Legislature, but there was not sufficient support in the United States Senate to obtain approval by a two-thirds vote. Thereafter Congress passed a joint resolution to accomplish the same purpose, which was approved July 7, 1898 (30 Stat. 750).

Of interest in this connection is action by Congress with respect to the construction of bridges across the international boundary—United States and Canada, subject to similar authorization by Canada. For example, Public Resolution No. 117, 75th Congress, 3rd session, created the Niagara Falls Bridge Commission and authorized it to construct and operate bridges across the Niagara River, subject to "approval of the proper authorities in the Dominion of Canada."

On November 11, 1927, President Coolidge issued a presidential licence to the Detroit-Ontario Subway, Inc., authorizing the company to construct, operate, and maintain a tunnel from a point in or near Brush or Randolph Street in the City of Detroit to a point on the international boundary line under the Detroit River. It is understood that corresponding authorization was given on the part of Canada by an Order in Council.

The improvement of the Great Lakes-St. Lawrence Basin for navigation and other purposes would seem clearly to fall within the commerce clause of the Constitution, giving the Congress the authority to regulate interstate and foreign commerce. Where the undertaking with respect to interstate and foreign commerce involves boundary waters over which this country does not have exclusive jurisdiction, there would seem to be no reason why the Congress should not within its Constitutional power enact legislation, contingent upon a like legislative enactment in the other country, signifying its approval of a joint undertaking signed by both Governments. The signing of an agreement by the two Governments would be but a convenient way of bringing about in advance of legislative enactments a joint undertaking by the two Governments on a complicated question which could hardly be handled without such advance understanding. The agreement would contain provisions which might otherwise be incorporated in a treaty, but would not take the treaty form or follow the treaty process. It would not constitute a binding international agreement until Congress and the Canadian Parliament had indicated their approval.

GREEN H. HACKWORTH.

(b) *Letter from the State Department, Washington, transmitting Legal Adviser's memorandum to the Attorney General of the United States, March 13, 1941*

DEPARTMENT OF STATE,

WASHINGTON, March 13, 1941.

MY DEAR MR. ATTORNEY GENERAL,—

I enclose for your consideration a memorandum prepared by the Legal Adviser of this Department, together with a copy of a proposed agreement between the United States and Canada regarding the Great Lakes-St. Lawrence Deep Waterway Project. It is hoped that an agreement may be signed within the next few days.

I should appreciate it if you would advise me whether you agree that the arrangement may be effectuated by an agreement signed under the authority of the Executives of the two countries and approved by legislative enactments by the Congress and the Canadian Parliament.

Sincerely yours,

CORDELL HULL.

The Honourable ROBERT H. JACKSON,
Attorney General.

1. Memorandum prepared by the Legal Adviser of the Department of State; March 13, 1941.
2. Copy of proposed agreement between the United States and Canada.

(c) *Letter from the Attorney General of the United States to the Secretary of State of the United States, March 14, 1941*

OFFICE OF THE ATTORNEY GENERAL,

WASHINGTON, D.C.

March 14, 1941.

The Honourable
The Secretary of State.

MY DEAR MR. SECRETARY,—

I have your letter of March 13 and concur in the conclusion reached by your Legal Adviser that it is legally unobjectionable so far as this country is concerned for the executives of the United States and Canada to enter into an agreement regarding the Great Lakes-St. Lawrence Deep Waterway project conditioned for its effectiveness upon the subsequent enactment of necessary legislation by the Congress and by the Canadian Parliament.

If an Agreement is executed and approved in this manner, its provisions would be binding upon the United States as respects Canada.

Respectfully,

ROBERT H. JACKSON,
Attorney General.

II. SUMMARY OF OUTSTANDING FEATURES

Summary of the Outstanding Features of the Great Lakes-St. Lawrence Basin Agreements; History of Project; Events leading up to the Agreement.

GREAT LAKES-ST. LAWRENCE BASIN AGREEMENTS

(NOTE: References are made to the White Paper tabled in the House of Commons, Friday, March 21, 1941, entitled "Correspondence and Documents relating to the Great Lakes-St. Lawrence Basin Development 1938-1941." References will be indicated as follows: W.P. p. 1.)

PART I

INTRODUCTION—HISTORY OF PROJECT—EVENTS LEADING UP TO THE AGREEMENT

1. The Agreement, which was signed March 19, 1941, by Canada and the United States, makes provision for the development of navigation and the power resources within the Great Lakes-St. Lawrence Basin, in the interest of the peoples of Canada and the United States. Generally, it covers the same fields as the Niagara Convention of 1929, and the St. Lawrence Waterway Treaty of 1932. (W.P. p. 1.)

2. For more than one-third of a century, the question of profitably employing the great natural water route of the Great Lakes and the St. Lawrence River has been engaging the attention of public men and engineers in this country. Long before that time attempts to navigate the rapids of the St. Lawrence River and the connecting channels of the Great Lakes had been made. As early as 1700 a great Frenchman, Dollier de Casson, built a small one and one-half foot canal around the Lachine Rapids in the Quebec section of the river. Since then this canal has been repeatedly deepened, and canals in other sections of the river have been built, in accordance with the policy of all Governments of the Dominion, to provide the most economic east and west transportation, feasible of accomplishment.

3. The first concerted action of the Governments of Canada and of the United States, in connection with a deep waterway from the Great Lakes to the sea, may be said to date from 1905 when a joint standing International Waterways Commission was created by the two Governments, the result of whose work led to the Boundary Waters Treaty of 1909 which became effective in 1910 and which, amongst other things, established the International Joint Commission to deal with all matters relating to international waters between Canada and the United States.

4. In 1920 both Governments referred the whole question of navigation and power in the St. Lawrence River to this Commission. One engineer representing each country was appointed to study the problem and in 1921 the Engineering Board, so formed, submitted its report known as the Wooten-Bowden report. The Commission also held hearings in five Provinces and sixteen States, examining exhaustively into the economic features of the proposed waterway. The report of the Commission to the two Governments was entirely favourable but recommended a further extended study.

5. In 1924 an International "Joint Board of Engineers" was appointed, consisting of six engineers, three being appointed by each Government. This Board reported in 1926 and furnished supplementary appendices in 1927. The Board was in general unanimity concerning the method by which the desired end should be attained. In one respect only did any divergence of opinion occur. Whereas the United States members of the Board recommended a single stage development of the International Rapids Section, the Canadian engineers were in favour of a two-stage development. The matter was then referred to

a Canadian Advisory Committee which reported in favour of the project as a whole. Finally, since the International Section of the river in Canada lies in Ontario, a conference between Dominion and Ontario engineers was held. This conference reported in favour of the enterprise generally, harmonized Dominion and Ontario views and, in view of the power situation in Ontario reported in favour of a two-stage development of the International Section.

6. In 1932, negotiations were completed between the Governments of Canada and of the United States for an agreement to provide for the construction of the Deep Waterway. This agreement was embodied in the St. Lawrence Deep Waterway Treaty signed at Washington on July 18, 1932. It was approved by the United States Senate Foreign Relations Committee with a majority of 10 on February 22, 1933, but following debate in the Senate was defeated by a vote of 46 to 42 on March 14, 1934. The votes for ratification were 12 short of the required two-thirds majority.

7. The Treaty provided for the construction of a 27-foot waterway from the head of the Great Lakes to Montreal; for a combined power-navigation project in the International Rapids Section of the St. Lawrence River enabling the development under a two-stage scheme of about 2,200,000 horse-power evenly divided between Canada and the United States; and for the clearing up of outstanding waterway projects, such as the Chicago Diversion, the conservation of the Great Lakes levels and the authorization of diversions into the St. Lawrence watershed from points outside that watershed, such as from the Ogoki and Long Lac areas, with retention for power purposes all down the international reach of all water so diverted.

8. Prior to the signing of the St. Lawrence Deep Waterway Treaty, the Canada-Ontario Agreement was signed on July 11, 1932. It automatically lapsed on July 11, 1935 under a clause which provided for such lapsing in the event of the St. Lawrence Deep Waterway Treaty not being concluded between and ratified by the High Contracting Parties within three years.

9. The Canada-Ontario Agreement provided that Canada should make available to Ontario for the development of power the Canadian share of the flow of water in the International Reach of the St. Lawrence River. Ontario, in exchange, agreed to pay to Canada a total of \$67,202,500 extended over a 10-year period; upon the completion of the payments Ontario was to become the owner of the power works on the Canadian side of the International Boundary.

10. Arising from the concern of the Governments of Canada and the United States regarding deterioration in scenic effects at Niagara Falls, a Special International Niagara Board was appointed by the two governments in 1926 to investigate and report upon the problem and, following the submission of an interim report on December 14, 1927, the Niagara Convention and Protocol was signed on January 2, 1929. It was approved by the Parliament of Canada on May 20, 1929, but upon submission to the Foreign Relations Committee of the United States Senate was reported against by that body on February 18, 1931.

11. The Convention provided that remedial works should be constructed in the Niagara River at the Niagara Falls designed to distribute the waters of the river so as to ensure at all seasons unbroken crest lines on both the Canadian and American Falls and an enhancement of their scenic beauty.

12. Also that, concurrent with the construction of remedial works and as a temporary and experimental measure, diversions (through water passages in existing power stations) of an additional 10,000 second-feet on the United States side of the river and 10,000 second-feet on the Canadian side of the river should be permitted beginning each year on the 1st day of October and ending the 31st day of March the following year, i.e., the non-tourist season.

13. It was provided that the cost of the works would be borne by the Hydro-Electric Power Commission of Ontario on the Canadian side and by the Niagara Falls Powers Company on the United States side.

14. Early in 1936, the United States undertook to revive the St. Lawrence Project. Later in that year, discussions between representatives of the two governments took place at Ottawa but were subsequently broken off.

15. In January, 1938, the Canadian Government proposed to the United States Government that the two countries enter into an agreement permitting the Province of Ontario to divert water from Long Lac into Lake Superior and thus provide additional water for power generation by the Ontario Hydro Electric Power Commission at Niagara Falls. In March, 1938, the United States replied to the effect that the needs of both countries could best be served by an agreement comprehending all problems relating to the Great Lakes-St. Lawrence Basin, adding that the United States stood ready to enter into negotiations to this end. In May of the same year the United States submitted the draft of a new Treaty to Ottawa. (W.P. p. 20.)

16. No steps were taken by Canada to enter into new treaty negotiations with the United States until several months after the outbreak of the present war, when rapidly increasing power demands in Ontario indicated the need of securing additional supplies at the earliest possible date. On December 26, 1939, the Canadian Government addressed a note to Washington suggesting that a meeting be arranged between representatives of the two countries to discuss the issues raised by the Treaty proposed by the United States in May, 1938. The United States agreed to this suggestion, and early in January, 1940, preliminary conversations were held at Ottawa. Substantial agreement was reached during further conversations held at Washington later in January. (W.P. p. 33, p. 34).

17. Developments in the negotiations were delayed for a time but in October, 1940, pending the conclusion of a final Great Lakes-St. Lawrence Basin Agreement, the United States consented to additional diversion of water at Niagara Falls by the Province of Ontario for generation of power by the publicly-owned Ontario Hydro Electric Power Commission contingent upon the diversion of water into Lake Superior from the Hudson Bay watershed in an amount equal to that diverted at Niagara. This resulted in making immediately available for war-production needs additional energy from existing plants of the Hydro-Electric Power Commission at Niagara Falls to the extent of some 70,000 horse-power. (W.P. p. 34).

18. At the same time and in order to expedite construction of the project in the International Rapids Section of the St. Lawrence if and when agreement should be reached between the two countries on the undertaking of the larger Great Lakes-St. Lawrence Development, the two countries agreed to appoint Temporary Committees to co-operate in undertaking preliminary investigations of the International Rapids Section. These Committees were appointed and investigations were immediately commenced, the cost of such investigations being defrayed from an allocation of \$1,000,000 to the United States Corps of Engineers by the President of the United States from a special defence fund.

19. At the first meeting of the two Committees at Massena, New York, on October 31, 1940, agreement was reached that the engineering investigations should be undertaken in accordance with a Controlled-Single Stage Project as recommended in a joint report prepared in January, 1940, by a board of engineers representing Canada and the United States and the subsequent investigations carried out under the auspices of the Committees having sustained the conclusions of this report, the Committees met in Ottawa on January 2 and 3, 1941, and submitted a joint report to the two governments recommending the adoption of the Controlled-Single Stage Project and endorsing a report of the re-convened board of engineers of January 3, 1941, in which the board adhered to its recommendation of January, 1940, and included revised estimates of cost.

20. Following the submission of the joint report of the two Temporary Committees negotiations were continued between representatives of the two governments with a view to securing a satisfactory Great Lakes-St. Lawrence Agreement and on March 19, 1941, the Agreement was signed at Ottawa.

21. The Great Lakes-St. Lawrence Agreement of 1941 includes in one document substantially the same features as the 1929 Niagara Convention plus the 1932 St. Lawrence Deep Waterway Treaty. It provides for the construction of the remaining links of a 27-foot waterway from the head of the Great Lakes to Montreal; for a combined power-navigation scheme in the International Section of the St. Lawrence River, the power to be developed in a Controlled-Single Stage Project yielding about 2,200,000 horse-power divided between the two countries; for the preservation of the scenic values of Niagara Falls combined with increased utilization of Niagara power; for the stabilization of the situation in regard to the Chicago diversion; and for the utilization for power purposes of waters which may be diverted into the Great Lakes System from other watersheds, such utilization being granted to the country making the diversions. (W.P. p. 1).

PART II

COMPARISON OF AGREEMENTS WITH 1929 NIAGARA CONVENTION AND 1932 TREATY AND AGREEMENT

22. The principal points of difference between the two previous treaties, the Niagara Convention of 1929 and the St. Lawrence Deep Waterway Treaty of 1932, and the Great Lakes-St. Lawrence Basin Agreement of 1941 are as follows:—

(a) Under the 1932 Treaty the method of control of joint development in the International Rapids Scheme of the St. Lawrence was by a Temporary St. Lawrence Commission empowered to construct all works except certain power works.

Under the 1941 Agreement the construction of works is to be undertaken by the Governments and a Great Lakes-St. Lawrence Basin Commission is to prepare plans, to allot work to be done by each Government; and to approve Government control and supervise construction.

(b) Under the 1932 Treaty, power was to be developed in two stages; at an upper dam and power-house at Crysler Island and at a lower dam and power-house at Barnhart Island.

Under the 1941 Agreement, power is to be in a Controlled-Single Stage Project with all power developed by a dam and power-house at Barnhart Island and a dam constructed near Iroquois Point for the purpose of river control only.

(c) In the 1932 Treaty the navigation canal passing the Crysler Island dam was to be built in Canadian territory and that passing the Barnhart Island dam in United States territory.

In the 1941 Agreement the navigation canals to pass the Iroquois Point Control Dam and the Barnhart Island Dam are both to be constructed in United States territory.

(d) Under the 1929 Niagara Convention remedial works were to be built in the Niagara River above the Falls to improve scenic qualities on lines recommended by the Special International Niagara Board's Report of 1927 and upon completion of these works a temporary diversion from the Niagara River above the Falls was to be authorized for seven years during the period October 1 to March 31 of each year, of 10,000 c.f.s. extra for power, on each side of the Boundary.

Under the 1941 Agreement the Great Lakes-St. Lawrence Commission is empowered to prepare plans for remedial works in the Niagara River above the Falls and the Governments may agree to build such works. On completion of the works, additional diversions for the whole year of 5,000 c.f.s. will be permitted for power on each side. The Commission after study may recommend further diversions.

- (e) Under the 1932 Treaty, diversions into the Great Lakes System were to be credited for power purposes to the country diverting the waters.

Under the 1941 Agreement the same agreement is made but in October, 1940, the United States agreed to immediate diversion and use of Ogoki and Long Lake water by Ontario, in anticipation of an agreement on the whole Great Lakes-St. Lawrence Project being reached.

- (f) Under the 1932 Treaty the Chicago diversion was to be reduced by the end of 1938 to the amount set by the United States Supreme Court decree and if the United States should propose to increase the diversion over that amount and Canada should object the question was to be referred to an arbitral tribunal.

In 1941 the Chicago diversion has been reduced to the final amount set by the United States Supreme Court decree and the 1941 Agreement provides that if any increase is authorized by the United States and not agreed to by Canada the United States will accept submission to an arbitral tribunal with power to direct compensatory or remedial measures.

- 23. As was the case in 1932, so in 1941 a Canada-Ontario Agreement was signed just prior to the signing of the Canada-United States Agreement.

The 1941 Canada-Ontario Agreement is similar in scope to the 1932 Agreement with added provisions brought about by the inclusion of the Niagara Remedial Works in the Canada-United States Agreement of 1941. (W.P. p. 11.)

- 24. The principal points of difference between the 1932 and 1941 Agreements are as follows:—

- (a) Under the 1932 Agreement, Ontario was to pay Canada a total of \$67,202,500 extended over a period of 10 years and upon completion of the payments Ontario was to become the owner of the power works and lands connected therewith on the Canadian side of the International Rapids Section of the St. Lawrence.

Under the 1941 Agreement, due to the lesser cost of a single stage power development Ontario is to pay Canada \$64,125,000 over a period of 10 years and upon completion of the first payment of \$20,000,000 Ontario is to become the owner of the power works and lands connected therewith on the Canadian side of the International Rapids Section of the St. Lawrence subject to provisions for revesting of the works in Canada if Ontario fails to make on the due date any of the subsequent payments.

- (b) Under the 1932 Agreement Canada agreed to share the cost of the construction and operation of the Ogoki River diversion should such be undertaken; Canada's share, when capitalized being equivalent to \$4,000,000.

Under the 1941 Agreement Ontario assumes all costs and charges on account of the Ogoki River and the Long Lac diversions and undertakes to proceed with these diversions in accordance with commitments already made.

PART III

HYDRO ELECTRIC POWER

25. Power benefits in Canada accruing from the provisions of the Great Lakes-St. Lawrence Basin Agreement of 1941 are realized, from the diversion of Ogoki River and Long Lake waters into the Great Lakes-St. Lawrence Basin, from the additional diversion of 5,000 c.f.s. at Niagara Falls upon completion of remedial works, and from the construction of the Controlled Single Stage Project in the International Rapids Section of the St. Lawrence River. The power benefits under these three heads are analysed briefly as follows:—

26. *Ogoki River and Long Lake Diversions.*—The Ogoki River diversion, which is under construction and is expected to take about two years to complete, is estimated to add 4,000 c.f.s. to the Nipigon River and throughout the Great Lakes-St. Lawrence System. The Long Lake diversion, which has been completed and is in operation, is estimated to add 1,000 c.f.s. to the Aguasabon or Black River and throughout the Great Lakes-St. Lawrence System.

In passing to Lake Superior the Ogoki diversion will add about 90,000 horse-power to the potential power of the Nipigon River, of which about 50,000 horse-power can be made readily available by extensions to existing plants of the Hydro Electric Power Commission of Ontario at Cameron Falls and Alexander Landing. The Long Lake diversion will permit development on the Aguasabon or Black River of about 20,000 horse-power. Passing through the outlet of Lake Superior at Sault Ste. Marie, the combined diversion of 5,000 c.f.s. will permit the development of 9,000 horse-power. On the Niagara River, by consent of the United States, benefit from the prospective addition of 5,000 c.f.s. has been permitted since November, 1940, and has resulted in increased production of power equivalent to approximately 70,000 horse-power in existing plants of the Hydro Electric Power Commission of Ontario at Niagara Falls. If this 5,000 c.f.s. should be utilized in a second full-head development at Queenston, it would provide 150,000 horse-power. Continuing down the St. Lawrence about 42,000 horse-power will be added to the power resources of Ontario in the International Rapids Section and about 54,000 horse-power to the resources of Quebec in the Beauharnois and Lachine Sections.

27. *Additional Diversion at Niagara following Remedial Works.*—The additional diversion of 5,000 c.f.s. for power purposes from the Niagara River above the Falls which will become available upon the completion of remedial works would provide 150,000 horse-power if used in a second full-head development at Queenston and pending the construction of such a new development will produce additional energy in existing stations at Niagara Falls.

28. *Development of International Rapids Section, St. Lawrence River.*—The development of the Controlled Single Stage Project in the International Section of the St. Lawrence River provides for the construction of two power-houses, one on the Canadian side and the other on the United States side of the International Boundary. Each station will have an installed capacity of about 1,100,000 horse-power.

The ultimate potential power benefits in Canada resulting from the Great Lakes-St. Lawrence Basin Development are summarized hereunder.

29. *Ultimate Power Benefits in Canada from Great Lakes-St. Lawrence Basin Agreement.*—

	Ultimate Potential Power in H.P.	
	In International Waters	In Wholly Canadian Waters
<i>Ogoki and Long Lake Diversions</i>		
Nipigon River in Ontario.....		90,000
Aguasabon River in Ontario.....		20,000
St. Mary River in Ontario.....	9,000	
Niagara River in Ontario.....	150,000	
St. Lawrence River in Ontario.....	42,000	
St. Lawrence River in Quebec.....		54,000
<i>Additional 5,000 c.f.s. at Niagara</i>		
Niagara River in Ontario.....	150,000	
<i>International Rapids Section Development</i>		
Ontario Power Development.....	1,100,000	
Total.....	1,451,000	164,000
Grand Total.....	1,615,000	

PART IV
CANADIAN SECTION

30. The Agreement provides for the completion of the Canadian Section of the deep waterway extending from the head of Lake St. Francis, the foot of the International Section, to Montreal Harbour, a total distance of 67 miles. It is divided into three sections. (W.P. p. 4).

31. *Lake St. Francis Section.*—This section extends from the foot of the International Section at the head of Lake St. Francis to the foot of that lake, a total distance of 26 miles.

The provision of a navigable channel 27 feet in depth through Lake St. Francis will necessitate the removal of eight projecting points and the excavation of a channel 2,000 feet long opposite the village of Lancaster.

32. *The Soulanges Section.*—The Soulanges Section extends from deep water at the foot of Lake St. Francis to deep water at the head of Lake St. Louis, a distance of 18 miles, in which distance, through a succession of rapids, the river falls about $83\frac{1}{2}$ feet. The Beauharnois Power Canal of the Beauharnois Light, Heat and Power Company, is located on the south side of the river. The Company, under provincial and dominion grants, has the right to divert from Lake St. Francis for power purposes, a flow of 83,072 c.f.s. The canal, about 15 miles in length, begins on the south shore of Lake St. Francis in Hungry Bay, follows a wide curve to the south, and enters Lake St. Louis north of the town of Beauharnois, where the power-house is located. The width of the power canal at the water line is about 3,200 feet and under the terms and conditions laid down in the Agreement between the Company

and the Dominion, the Company must provide a dredged channel adjacent to the north embankment 600 feet wide and 27 feet deep. A control dam across the power canal is located about 4 miles from Lake St. Francis.

The project proposed for carrying the deep waterway through the Soulanges Section contemplates the utilization of the Beauharnois power canal for navigation.

The work required to be done to provide navigation throughout the section is as follows:—

- (a) Excavation of an entrance channel, 450 feet wide, from deep water in Lake St. Francis to join the power canal.
- (b) Excavation of a short side canal and the construction of a guard lock to pass navigation by the control dam.
- (c) Excavation of a short side canal and the construction of a guard gate and two twin locks in flight to pass from the power canal to Lake St. Louis.
- (d) Replacement of two fixed bridges over the power canal by two vertical lift bridges, as well as the construction of a railway bridge over the guard gate and a highway bridge over the lower entrance to the flight locks.

33. *The Lachine Section.*—This section, 23 miles long, extends from deep water at the head of Lake St. Louis to Montreal harbour.

The project proposed for the improvement of the Lachine Section is that recommended by the Joint Board of Engineers in 1926, and consists of a side canal with locks for navigation, with control of the levels of Lake St. Louis.

The main features of this project are as follows:—

- (a) A submarine channel, 5 miles long, extending from deep water in Lake St. Louis to Lachine.
- (b) An overland canal, 10 miles long, extending from Lachine to deep water in Montreal Harbour. This canal flanks the north shore of the river.
- (c) A pair of guard gates and three lift locks designed to overcome a maximum difference in level of 53 feet.
- (d) A dam across the river at Ile aux Diable with such other works as will be required to hold the low water level of Lake St. Louis to elevation 71.
- (e) The necessary highway and railway bridges.

PART V

FINANCIAL PROVISIONS

34. The Canada-United States Agreement provides for the establishment and maintenance of a Great Lakes-St. Lawrence Basin Commission. The duties are set forth in Article I, and they include design, supervision and regulation in the Niagara River and in the International Section of the St. Lawrence.

The actual construction is to be carried out by the two Governments. In Article II, the Canadian Government undertakes to construct the works in the International Rapids Section allocated to Canada by the Commission, and to complete the Canadian links in the deep waterway, including the deepening of the Welland Ship Canal and the construction of canals and other works in the Canadian Section of the St. Lawrence. The works allocated to Canada would, subject to necessary adjustment, comprise the works on the

Canadian side. By Article III, the United States Government undertakes to provide funds for the construction of all works in the International Rapids Section, except machinery and equipment for the development of power, and works required for rehabilitation on the Canadian side.

35. The Canadian Government would, therefore, be constructing all the works in the International Rapids Section on the Canadian side (subject to adjustments in the allocation of works by the Commission, whereby some Canadian contracts might overlap the boundary-line, and United States contracts might extend to a moderate extent on the Canadian side). Of the expenditures thus made, the costs of acquiring lands and of the rehabilitation of Iroquois and Morrisburg would be direct obligations of the Government. All of the other expenses would be paid for by the United States Government, from time to time, as the work progressed. (W.P. pp. 2, 3, 4).

36. The works would include the power house on the Canadian side and all other power works, except equipment and machinery, as well as the dykes, dams and other common works. Under the Agreement with Ontario, provision is made for the transfer of the power works and of all rights in respect of power to Ontario, for the sum of \$64,125,000. In this manner, an arrangement is worked out, whereby Ontario pays for the whole of the cost of Canada's share of the power works, and 62·5 per cent of the cost of Canada's share of the common works. (W.P. p. 11).

37. The other works involved, to be constructed by the Canadian Government, are the deepening of the Welland Ship Canal and the development of the Canadian section for navigation. The estimated cost of the first item would be \$1,100,000 and the estimated cost of the development of the Canadian Section would be \$82,954,000.

38. The apportionment of costs in the Canadian Section is covered by a letter from the Prime Minister of Canada to the Premier of Quebec, March 12, 1941. An undertaking was given that "if and when Quebec takes over the control and operation of the Beauharnois development, there will be paid to the Government of Quebec, by the Government of Canada, the sum of \$7,972,500." It is also provided "that, if and when power is developed within the Lachine Section, full recognition will be given to the rights and obligations of the Government of the Province of Quebec." In this manner provision is made to divide equitably the savings accruing from the construction of navigation and power works as a joint enterprise, applying the same principle in the adjustment of the costs of the developments undertaken in the National Section of the Waterway as was applied in the arrangements under the Agreement between Canada and Ontario. (W.P. pp. 70-72.)

39. The result of the foregoing provisions is that the net cost to Canada of the whole development, would be \$42,343,000. This would compare with an estimate on a comparable basis for the 1932 project at \$43,776,500. This would, of course, be subject to revision, in the event that the provision of the Agreement with Quebec for the division of the common works in the Beauharnois Section, referred to above, becomes effective.

PART VI

PROTECTION OF NAVIGATION AND POWER INTERESTS IN THE LOWER ST. LAWRENCE

40. Article IV of the Canada-United States Agreement provides:—

(d) during the construction and upon the completion of the works provided for in the International Rapids Section, the flow of water out of Lake Ontario into the St. Lawrence River shall be controlled and the flow of water through the International Section shall be regulated so that the navigable depths of water for shipping in the harbour of Montreal and

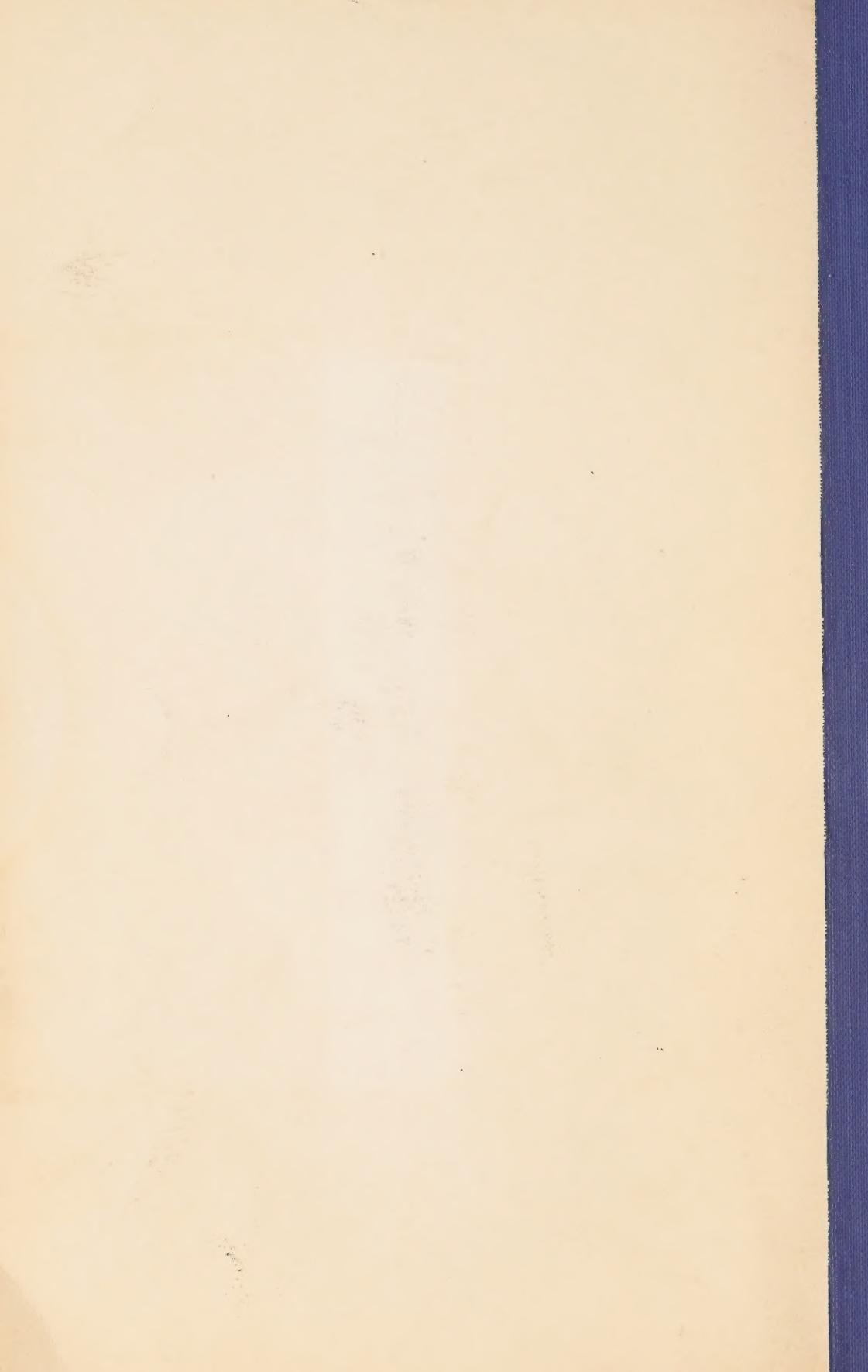
throughout the navigable channel of the St. Lawrence River below Montreal, as such depths now exist or may hereafter be increased by dredging or other harbour or channel improvements, shall not be injuriously affected by the construction or operation of such works, and the power developments in the Canadian Section of the St. Lawrence River shall not be adversely affected.

Provision is also made for insuring adequate international control, to give effect to these provisions. (W.P. pp. 5, 6.) Both Ontario and Quebec will have adequate and acceptable representation on any international boards or other bodies directing the design, construction or operation of the works, or directing the regulation or control of the water. (W.P. p. 15, p. 71.)

PART VII

UNITED STATES UNDERTAKINGS

41. Apart from the financial undertakings, the United States will deepen the navigation channels in the upper lakes area, will construct a new lock at the Sault Ste. Marie, side canals and locks near Iroquois Point and Barnhart Island, and the power works and common works on the United States side of the International Rapids Section. (W.P. pp. 4, 5.)



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E Great Lakes-St. Lawrence basin development, 1938-
1941. Supplement, No. 1.

DATE.	NAME OF BORROWER.
Apr 13/42	Frank J. O.
8/5/42	W. A. Meldoll (D.E.A.)
1 Nov 48	K. Cass - Reggs
Jan 14/55	DOWSON (st) 7424

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